

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4
5 M. BRADFORD,

6 Plaintiff,

7 vs.

8 STATION CASINOS, LLC,

9 Defendant.

2:13-cv-02265-JAD-VCF

ORDER AND
REPORT & RECOMMENDATION

10
11 Before the court are Plaintiff M. Bradford's application to proceed *in forma pauperis* (#1¹) and
12 complaint (#1-1).

13 **BACKGROUND**

14 This matter involves a trademark infringement claim. (Compl. (#1-1) at 1:17). Bradford alleges
15 that sometime around June through August of 2013, Defendant Station Casino, LLC "continued to break
16 federal regulations by copying and using Plaintiff's designs, developments materials and features that
17 Patents [sic] have been Pending [sic] for since around January 2013." (*Id.* at 1:24-28). On December 12,
18 2013, Bradford filed suit in U.S. District Court for the District of Nevada.

19 **DISCUSSION**

20 Bradford's filings present two questions: (1) whether Bradford may proceed *in forma pauperis*
21 under 28 U.S.C. § 1915(e); (2) whether Bradford's complaint states a claim for trademark infringement.
22 Both issues are discussed below.
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25 ¹ Parenthetical citations refer to the court's docket.

1 **I. Bradford may Proceed in Forma Pauperis**

2 Bradford application to proceed *in forma pauperis* is granted. 28 U.S.C. § 1915(a)(1) permits a
 3 plaintiff to bring a civil action “without prepayment of fees or security thereof” if the plaintiff submits a
 4 financial affidavit that demonstrates the plaintiff’s “is unable to pay such fees or give security therefor.”
 5 Pursuant to section 1915(a)(1), Bradford submitted a financial affidavit (#1). According to the affidavit,
 6 Bradford makes \$1,000 per month and incurs \$1,250 in expenses each month. (*Id.*) (*Id.*) Bradford’s
 7 application to proceed *in forma pauperis* is, therefore, granted.

8 **II. Whether Bradford’s Complaint is Frivolous, Malicious, or Fails to State a Plausible Claim**

9 Because the court grants Bradford’s application to proceed *in forma pauperis*, it must review
 10 Bradford’s complaint to determine whether the complaint is frivolous, malicious, or fails to state a
 11 plausible claim. *See* 28 U.S.C. § 1915(e). The court’s review of Bradford’s complaint is governed by
 12 Federal Rule of Civil Procedure 8.

13 **A. Legal Standard**

14 Federal Rule of Civil Procedure 8(a) provides that a complaint “that states a claim for relief must
 15 contain . . . a short and plain statement of the claim showing that the [plaintiff] is entitled to relief.” FED.
 16 R. Civ. P. 8(a)(2). The Supreme Court’s decision in *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) states
 17 that in order to satisfy Rule 8’s requirements a complaint’s allegations must cross “the line from
 18 conceivable to plausible.” 556 U.S. at 680. The Court’s decisions in *Bell Atlantic Corp. v. Twombly*, 550
 19 U.S. 544, 556 (2007) and *Iqbal* prescribe a two-step procedure for determining whether a complaint’s
 20 allegations cross that line.
 21

22 First, the court must identify “the allegations in the complaint that are not entitled to the
 23 assumption of truth.” *Iqbal*, 556 U.S. at 679, 680. Factual allegations are not entitled to the assumption
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 25

1 of truth if they are “merely consistent with liability,” *id.* at 678, or “amount to nothing more than a
2 ‘formulaic recitation of the elements’” of a claim. *Id.* at 681.

3 Second, the court must determine whether the complaint states a “plausible” claim for relief. *Id.*
4 at 679. A claim is “plausible” if the factual allegations, which are accepted as true, “allow[] the court to
5 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. This
6 inquiry is “a context-specific task that requires the reviewing court to draw on its judicial experience and
7 common sense.” *Id.* at 679 (citation omitted).

8 If the factual allegation, which are accepted as true, “do not permit the court to infer more than
9 the mere possibility of misconduct, the complaint has alleged—but it has not “show[n]”—“that the
10 pleader is entitled to relief.” *Id.* (citing FED. R. CIV. P. 8(a)(2)).

11 Where, as here, the court dismisses a complaint under section 1915(e), the plaintiff should be
12 given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from
13 the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United*
14 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (citation omitted).

15
16 ***B. Bradford’s Complaint Fails to State “Sufficient Factual” Matter***

17 The court finds that Bradford’s complaint fails to state “sufficient factual” matter to state a
18 plausible claim for relief and, therefore, should be dismissed. As discussed above, the Supreme Court’s
19 decisions in *Iqbal* and *Twombly* require complaints to contain, *inter alia*, “sufficient factual matter,
20 accepted as true.” *Iqbal*, 556 U.S. at 678. A complaint’s legal conclusions, however, are no substitute for
21 “sufficient factual” matter because they are not accepted as true. *See id.* (“[T]he tenant that a court must
22 accept as true all the allegations contained in a complaint is inapplicable to legal conclusions. . . [A]
23 court considering a motion to dismiss can choose to begin by identifying pleadings that, because they
24 are no more than conclusions, are not entitled to the assumption of truth.”)

1 The court recommends dismissing Bradford's complaint because Bradford has only pled legal
2 conclusions, and not "sufficient factual" matter, in support of his claims against Station Casino. In
3 pertinent part, Bradford's complaint states:

4 The following matter is to be heard in the Federal Court, District, United States
5 District of Nevada.

6 This Complaint states that the above named defendant presented misconduct
7 against the above named Plaintiff regarding federal regulations for Plaintiff's Copyrights,
8 Patents and Trademarks and that this incident took place on and around June, July and
9 August 2013, and on these days the defendant continued to break federal regulations that
10 Patents have been Pending for since around January 2013.

11 [. . .]

12 Further Points, Exhibits and Evidence are to be later filed and presented to the
13 court and in court by the Plaintiff.

14 (Compl. (#1-1) at 1-2).

15 These are conclusions. Standing alone, they do not give rise to a "plausible" claim because they
16 do not contain "sufficient factual" matter. *Iqbal*, 556 U.S. at 678. Therefore, Bradford's claims against
17 Station Casino, LLC are dismissed.

18 Nonetheless, because Bradford is a *pro se* litigant, the court recommends granting Bradford
19 leave to cure the deficiencies in his complaint by alleging a "plausible" claim against Station Casino,
20 LLC. *Cato*, 70 F.3d at 1106.

21 ACCORDINGLY, and for good cause shown,

22 IT IS ORDERED that Plaintiff M. Bradford's application to proceed *in forma pauperis* (#1) is
23 GRANTED.

24 IT IS FURTHER ORDERED that the Plaintiff M. Bradford is permitted to maintain the action to
25 conclusion without the necessity of prepayment of any additional fees, costs, or security. This order
granting *in forma pauperis* status does not extend to the issuance of subpoenas at government expense.

1 IT IS FURTHER RECOMMENDED that Plaintiff M. Bradford's complaint be DISMISSED with
2 leave to amend.

3 IT IS FURTHER RECOMMENDED that if the court adopts this Report & Recommendation, a
4 DATE be set for the filing of the Amended Complaint to avoid dismissal with prejudice.

5 **NOTICE**

6 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
7 writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that
8 the courts of appeal may determine that an appeal has been waived due to the failure to file objections
9 within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that
10 (1) failure to file objections within the specified time and (2) failure to properly address and brief the
11 objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues
12 from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*
13 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).
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15 DATED this 13th day of December, 2013.

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18 CAM FERENBACH
19 UNITED STATES MAGISTRATE JUDGE
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